

~~SECRET~~

UAC-4335

NEGOTIATED CONTRACT		Air Force	EFFECTIVE DATE 25 FEB 1963	SHEET NO. 1	NO. OF SHEETS 10
REQ NO. OR OTHER PURCHASE AUTH	NEGOTIATED PURSUANT TO 10 U.S.C. 2304 (a) ()	DISCOUNT TERMS	CONTRACT NO. SH-513 AF33(657)10449		
ISSUED BY Headquarters Aero Systems Division Attn: ASZ/5 Wright-Patterson AFB, Ohio		MAIL INVOICES TO Headquarters Aero Systems Division Attn: ASZ/5 Wright-Patterson AFB, Ohio			
CONTRACTOR (Name and Address) Shell Oil Company 50 West 50th Street New York 20, N. Y.		PAYMENT WILL BE MADE BY Headquarters Aero Systems Division Attn: ASZ/5 Wright-Patterson AFB, Ohio			
SHIP TO (Consignee and Address) See Part I of the Schedule		DELIVERY F.O.B. <input checked="" type="checkbox"/> DESTINATION <input type="checkbox"/> OTHER (See Schedule) DELIVERY DATE(S)			

ACCOUNTING AND APPROPRIATION DATA
(Departmental Overprinting Will Be Authorized)

CONTRACTOR REPRESENTS

- That it ☐ IS, ☒ IS NOT, a small business concern. Generally, a small business concern for the purpose of Government procurement is a concern that (1) is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 103, as amended, which contains the detailed definition and related procedures.) If Contractor is a small business concern and is not the manufacturer of the supplies covered by this contract, it also represents that all supplies to be furnished hereunder ☐ WILL, ☒ WILL NOT, be manufactured or produced by a small business concern in the United States, its Territories, its Possessions, or The Commonwealth of Puerto Rico.
- That it is a ☐ REGULAR DEALER IN, ☒ MANUFACTURER OF, the supplies covered by this contract.
- (a) That it ☐ HAS, ☒ HAS NOT, employed or retained any company or person (other than a full-time bona fide employee working solely for the Contractor) to solicit or secure this contract, and (b) that it ☐ HAS, ☒ HAS NOT, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the Contractor) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 44, Part 150.)
- That it operates as ☐ INDIVIDUAL ☐ PARTNERSHIP ☒ CORPORATION incorporated in the State of **Delaware**

The Contractor agrees to furnish and deliver all the supplies and perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

The total amount of this contract is \$

Shell Oil Company NAME OF CONTRACTOR		UNITED STATES OF AMERICA	
BY _____ TITLE _____ President	DATE 1 Mar '63	BY _____	25X15X1

DD FORM 1261
1 DEC 58

REPLACES DD FORMS 351, 351-1, AND 351-2,
WHICH ARE OBSOLETE AFTER 1 JAN 63.

GPO 16-73941-1

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO.
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
PART I SUPPLIES AND SERVICES TO BE FURNISHED						
<p>The Contractor shall furnish and deliver to the Government the following supplies, equipment, materials and services at the total price herein below set forth:</p>						
<p>Item 1. Contractor shall procure, fabricate and/or install the following equipment and special facilities at Thule AFB, Greenland at a designated site described in a Memorandum of Understanding dated 11 September 1962 between the Contractor and the United States Air Force.</p>						
<p>(a) Disconnect and isolate existing 55,000-bbl tank from the Base POL system. Revise and install new connections and make necessary modifications to the tank, using materials and designs suitable for handling Processing Fluid (PF-1). Clean and coat interior of tank with suitable coating. Provision for heating the product above ambient temperatures will be provided.</p>						
<p>(b) Install new line from tanker anchorage to above tank. Installation to be of materials and design suitable for discharging Processing Fluid (PF-1) from tanker into above tank.</p>						
<p>(c) Install new 5,000-bbl tank fabricated of materials suitable for PF-1, and connect to items (1) and (2) to form an operating unit. Provision for heating the product will be included.</p>						
<p>(d) Install a metal frame building, approximately 30' x 60' suitable for the existing climate and equipped to provide storage space for two trucks, an office space, storage room, and a room for the pumps and filters required by the installation. Building will be heated electrically and chemical sanitation facilities will be provided.</p>						
<p>(e) A truck filling rack will be provided capable of loading two trucks simultaneously.</p>						
<p>(f) The entire area will be enclosed by an 8-ft. chain type fence, topped by three strands of barbed wire canted outward. Lights will be provided to flood the area.</p>						
<p>(g) The Contractor will provide technical personnel, including transportation and subsistence, for a survey of two other locations under consideration.</p>						
<p>(h) Engineering support necessary to design and monitor construction of the above items will be provided together with the technical supervisions and laboratory support for making the facility operational.</p>						
NAME OF BIDDER OR CONTRACTOR						

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO. 3
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	All of the foregoing shall be accomplished at a total price of \$980,675.					
	Item 2. Contractor shall procure, fabricate and/or install the following equipment and special facilities at Castle AFB, California at a site designated by the Air Force on said AFB.					
	(a) Install two 10,000-bbl tanks fabricated of materials suitable for storage of PF-1.					
	(b) Install the necessary connections, including piping, pumps, filters, etc. for unloading rail tank cars into the above storage (item 1).					
	(c) Install the necessary facilities for loading trucks from the above storage (item 1), including the necessary piping, pumps, filters, etc. suitable for handling PF-1.					
	(d) Provide the necessary electrical connections from the Base supply.					
	(e) Provide the necessary site preparation, including security fencing, security lighting, access paving, etc. to the truck-loading facility.					
	(f) Provide a gravel roadway around two sides of area outside the security fence.					
	All of the foregoing shall be accomplished for a total price of \$113,500.00					
	PART II DELIVERY					
	(a) Contractor shall have completed all work called for under Item 1 and be ready for Government inspection and acceptance on or before 30 January 1963 except for the coating of Item 1 (c) which shall be completed on or before 1 July 1963.					
	(b) Contractor shall have completed all work called for under Item 2 and be ready for Government inspection and acceptance on or before 15 March 1963.					
	PART III INSPECTION AND ACCEPTANCE					
	Final inspection and acceptance of Item 1 and 2 shall be made by a designated representative of the Contracting Officer within 10 days after receipt of notification from the Contractor that the equipment and facilities are ready for such inspection and acceptance.					
NAME OF BIDDER OR CONTRACTOR						

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO.
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	<p>PART IV MATERIAL INSPECTION AND RECEIVING REPORT</p> <p>DD Form 250, Material Inspection and Receiving Report, for the work called for under Item 1 and 2 must be forwarded to:</p> <p>Four (4) Copies - Headquarters Aero System Division (APL/5) Wright-Patterson AFB, Ohio</p> <p>PART V SPECIAL SECURITY RESTRICTIONS:</p> <p>The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and the work thereunder except as the Contractor is directed to reveal such information by the Contracting Officer or by his duly authorized representative for security matters, and, notwithstanding any clause or section of this contract to the contrary, the Contractor shall not interpret any clause or section of this contract as requiring or permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.</p> <p>PART VI WAIVER OR REQUIREMENTS OF GENERAL PROVISIONS</p> <p>Notwithstanding the requirements of any of the General Provisions of this Contract to the contrary, whenever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.</p> <p>PART VII FINAL STATEMENT OF COSTS</p> <p>(a) Upon completion of all work called for under this contract, the Contractor shall submit a detailed report of all costs incurred in the performance of the work hereunder except those costs incurred by reasons of general administration, accounting, contract preparation, technical consultation, laboratory</p>					
NAME OF BIDDER OR CONTRACTOR						

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO. 5
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	<p>support, personnel transportation, inspection and supervision of facility start-up which are estimated at \$38,675.00 and \$4,500.00 and are included in the price of Items 1 and 2 respectively.</p> <p>(b) In the event that such report of final costs indicates that the total costs incurred are greater or lesser than the total price of this contract, inclusive of the above mentioned \$43,175 than at the request of either party hereto it is agreed that the contract price shall be subject to redetermination in accordance with the provision of PART VIII set forth below. However, in no event shall those elements of costs represented by the estimated \$43,175.00 be subject to redetermination.</p> <p><u>PART VIII RETROACTIVE PRICE REDETERMINATION AFTER COMPLETION</u></p> <p>(a) Because of the nature of the work called for by this contract and the uncertainty as to the cost of performance hereunder, the parties agree that the contract price hereof may be adjusted in accordance with the provisions of this clause.</p> <p>(b) Within sixty (60) days after the completion or termination of this contract, and subject to the provisions of PART VII above, the Contractor will prepare and submit to the Contracting Officer a revised price proposal for the supplies and services furnished on the contract supported by a cost statement, itemized so far as is practical in the manner prescribed by DD Form 784, and subject to the provision of PART VII above, together with such other information as may be pertinent in the negotiation for a revised price pursuant to this clause. The Contracting Officer shall have the right at all reasonable times to make or cause to be made such examinations and audits of the Contractor's books, records, and accounts as he may request.</p> <p>(c) Upon the filing of the statement and other pertinent information required by paragraph B of this clause, the Contractor and the Contracting Officer will promptly negotiate in good faith to agree upon a reasonable revised price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the Contractor for the performance of this contract. In establishing such revised price, the following shall control: The contract price set forth in Part I, as such contract price has been adjusted pursuant to the clause hereof entitled, Changes, shall be redeterminable upward to a maximum of one hundred and ten per cent (110%) of such contract price. The contract price set forth in Part I shall also be redeterminable downward. The Contractor will exert his best efforts to perform the work for less than the contract price. It is agreed that, in the event the total of all costs are less than such contract price, as adjusted pursuant to the clause hereof entitled, Changes, subject to the provision of PART VII above, the Contractor shall be entitled to no additional profit. In no event shall the final price exceed \$1,203,593.00.</p>					
NAME OF BIDDER OR CONTRACTOR						

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO.
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	<p>(d) If within ninety (90) days after the completion or termination of this contract or such further period as may be fixed by written agreement, the parties shall fail to agree upon a revised price in accordance with the provisions of this clause, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled, Disputes.</p> <p>(e) In the event of a price increase, the Government will pay or credit to the Contractor the amount by which the revised price shall exceed the contract price aforesaid. In the event of a decrease in price, the Contractor will repay or credit the amount of such decrease to the Government in such manner as the Contracting Officer may direct.</p> <p>(f) For any of the purposes of the clause herein entitled, Termination for Convenience of the Government (including without limitation, computation of the total contract price and the contract price of work not terminated), the contract price shall be the revised contract price agreed upon under paragraph C of this clause or determined under paragraph D of this clause, as the case may be.</p> <p>PART IX PROGRESS PAYMENTS</p> <p>(a) Progress payments, which are hereby defined as payments prior to acceptance, on work in progress for the Government under this contract, may be made upon the following terms and conditions:</p> <p>(b) The Contracting Officer may, from time to time, authorize progress payments to the Contractor upon property acquired or produced and service performed by it for the performance of this contract; provided, that such progress payments shall not exceed ninety per cent (90%) of the cost to the Contractor of the property and services upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer as being representative of the value of the work already performed, provided further, that in no event shall the total of unliquidated progress payments (see E below) and of unliquidated advance payments, if any, made under this contract, exceed ninety-five per cent (95%) of the total contract price of supplies or services still to be delivered.</p> <p>(c) Upon the making of any progress payment under this contract, title to all parts, materials, inventories, work in process and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production; provided, that nothing herein shall</p>					
NAME OF BIDDER OR CONTRACTOR						

SECRET

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO. 7
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	<p>deprive the Contractor of any further progress or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.</p> <p>(d) The Contractor represents and warrants that the property upon which any progress payment is made hereunder, shall be cleared of all liens and encumbrances of any kind whatsoever, upon receipt of any progress payment.</p> <p>(e) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the progress payments theretofore made to the Contractor, under the authority herein contained.</p> <p>(f) It is recognized that property (including, without limitation completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this clause will from time to time be used by or be put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of Notice of Termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer; provided, that after receipt of Notice of Termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price in case of acquisition by the Contractor (or the proceeds received by the Contractor in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of progress payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be ruled accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting officer; but the proceeds will be applied as provided in this paragraph F, provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all progress payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this clause shall vest in the Contractor.</p> <p>(g) The provisions of this contract referring to Liability for Government-furnished Property and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this clause. The provisions of this clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests</p>					
NAME OF BIDDER OR CONTRACTOR						

SECRET

SECRET

Standard Form 36 Prescribed by General Services Administration, Nov. 1949 Edition		CONTINUATION SHEET (SUPPLY CONTRACT)		CONTRACT, ORDER, OR INVITATION NO. (As applicable)		PAGE NO. 8
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT	
	<p>in the Government under the provisions hereof.</p> <p>(h) If this contract (as hereinafter or hereafter supplemented or amended) contains provisions for advance payments, and in addition if at the time any progress payment is to be made to the Contractor under the provisions of this Progress Payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Progress Payments clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such progress payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Progress Payments clause, and shall thereafter be withdrawn only pursuant to such provisions.</p> <p>PART X <u>LEASE AGREEMENT</u></p> <p>It is hereby recognized that the Contractor's performance of the work called for hereunder is contingent upon the Government making available the land at Thule AFB, Greenland under a separate lease hold arrangement between the Contractor and the Air Force at a cost not to exceed \$200,00 per annum or some other mutually advantageous arrangement as may be agreed upon by the parties hereto.</p> <p>PART XI <u>GENERAL PROVISIONS</u></p> <p>This contract shall consist of the General Provisions attached hereto and made a part of this contract. Further, Contractor shall, insofar as security permits, include in all subcontracts hereunder for construction work those clauses set forth in the Armed Services Procurement Regulations entitled:</p> <ol style="list-style-type: none"> (1) Davis-Bacon Act (2) Apprentices (3) Payroll Records and Payrolls (4) Copeland (Anti-Kickback) Act (5) Withholding of Funds to assure Wage Payment 					
NAME OF BIDDER OR CONTRACTOR						

SECRET

SECRETINDEX TO GENERAL PROVISIONS

<u>Clause No.</u>		<u>Page No.</u>
1.	DEFINITIONS.....	1
2.	CHANGES.....	1
3.	EXTRAS.....	2
4.	VARIATION IN QUANTITY.....	2
5.	INSPECTION.....	2
6.	RESPONSIBILITY FOR SUPPLIES.....	3
7.	PAYMENTS.....	4
8.	ASSIGNMENT OF CLAIMS.....	4
9.	ADDITIONAL BOND SECURITY.....	4
10.	FEDERAL, STATE, AND LOCAL TAXES.....	5
11.	DEFAULT.....	7
12.	DISPUTES.....	8
13.	SOVIET-CONTROLLED AREAS.....	9
14.	EIGHT-HOUR LAW OF 1912-OVERTIME COMPENSATION.....	9
15.	WALSH-HEALEY PUBLIC CONTRACTS ACT.....	9
16.	NONDISCRIMINATION IN EMPLOYMENT.....	10
17.	OFFICIALS NOT TO BENEFIT.....	10
18.	COVENANT AGAINST CONTINGENT FEES.....	10
19.	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.....	11
20.	AUTHORIZATION AND CONSENT.....	16
21.	NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT...	16
22.	BUY AMERICAN ACT.....	17
23.	FILING OF PATENT APPLICATIONS.....	18
24.	PATENT RIGHTS.....	18
25.	DATA.....	23
26.	MILITARY SECURITY REQUIREMENTS.....	24
27.	UTILIZATION OF SMALL BUSINESS CONCERNS.....	26
28.	EXAMINATION OF RECORDS.....	26
29.	GRATUITIES.....	26
30.	CONVICT LABOR.....	27
31.	MATERIAL INSPECTION AND RECEIVING REPORT.....	27
32.	SUBCONTRACTS.....	27
33.	SUBCONTRACTS.....	27
34.	GROUND AND FLIGHT RISK.....	28
35.	INSPECTION AND AUDIT.....	33
36.	GOVERNMENT-FURNISHED PROPERTY.....	34
37.	ALTERATIONS IN CONTRACT.....	38

FP or PR
9 Feb 60

GENERAL PROVISIONS

1. DEFINITIONS (ASPR 7-103.1)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "sub-contracts" includes purchase orders under this contract.

2. CHANGES (ASPR 7-103.2)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed. (Rev. No. 28, 1/28/58; Rev. No. 30, 3/17/58)

FP or PR
9 Feb 60

-1-

3. EXTRAS (ASPR 7-103.3)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

4. VARIATION IN QUANTITY (ASPR 7-103.4)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

5. INSPECTION (ASPR 7-103.5)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. (Rev. No. 33, 5/14/58.)

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." (Rev. No. 28, 1/28/58.)

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in

FP or PR
9 Feb 60

the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: Provided, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor. (Rev. No. 28, 1/28/58.)

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

6. RESPONSIBILITY FOR SUPPLIES (ASPR 7-103.6)

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment. (Rev. No. 28, 1/28/58.)

FP or PR
9 Feb 60

7. PAYMENTS (ASPR 7-103.7)

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract. (Rev. No. 30, 3/17/58.)

8. ASSIGNMENT OF CLAIMS (ASPR 7-103.8)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U. S. Code 203, 41 U. S. Code 15) if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and re-assigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: Provided, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer. (Rev. No. 28, 1/28/58.)

(c) The Contractor shall obtain the written authorization of the Contracting Officer prior to the assignment of any rights under this contract.

9. ADDITIONAL BOND SECURITY (ASPR 7-103.9)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

FP or PR
9 Feb 60

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10. FEDERAL, STATE, AND LOCAL TAXES (ASPR 11-401.1)

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional supplies or services procured by modification to this contract, the terms "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to this contract on the tax inclusive date, except taxes (other than Federal transportation taxes) from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price, and, if freight is included in the contract price, Federal transportation taxes are likewise included.

(c) (1) If the Contractor is required to pay or bear the burden

(i) of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price;

or of any interest or penalty thereon, the contract price shall be correspondingly increased; provided that the Contractor warrants in writing that no amount for such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and provided further that liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or draw back of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall

FP or PR
9 Feb 60

-5-

SECRET

inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax involved.

(4) Nothing in this paragraph (c) shall be applicable to social security taxes; net income taxes; excess profit taxes; capital stock taxes; Federal transportation taxes, except changes in the rate thereof, including repeal, pertaining to shipments from the Contractor to the Government; unemployment compensation taxes; or any State and local taxes, except those levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract, including gross income taxes, gross receipts taxes, sales and use taxes, excise taxes, or franchise or occupation taxes measured by sales or receipts from sales.

(5) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax; provided that evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees. (Rev. No. 28, 1/28/58) (Rev. No. 39, 11/3/58; Rev. No. 49, 10/1/59).

FP or PR
9 Feb 60

11. DEFAULT (ASPR 7-103.11 - ASPR 8-707)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: Provided, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially

FP or PR
9 Feb 60

completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (Except as otherwise provided in this contract, this paragraph (e) applies only if this contract contains such clause.)

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (Rev. No. 36, 9/5/58).

12. DISPUTES (ASPR 7-103.12)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

FP or PR
9 Feb 60

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above. Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law. (Rev. No. 28, 1/28/58.)

13. SOVIET-CONTROLLED AREAS (ASPR 6-403)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule and this subparagraph (b), in all subcontracts hereunder. (Rev. No. 39, 11/3/58.)

14. EIGHT-HOUR LAW OF 1912-OVERTIME COMPENSATION (ASPR 12-303.1)

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government. (Rev. No. 28, 1/28/58.)

15. WALSH-HEALEY PUBLIC CONTRACTS ACT (ASPR 12-604 mod)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such

representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect, "except that the Contractor shall not be required to include this clause in subcontracts issued hereunder when the inclusion of this clause in a subcontract would jeopardize or conflict with the security considerations established in connection with this contract."

16. NONDISCRIMINATION IN EMPLOYMENT (ASPR 12-802 mod)

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause. (Rev. No. 28, 1/28/58.)

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials, "and except as insertion of the foregoing provision in a subcontract would jeopardize or conflict with the security considerations established in connection with this contract."

17. OFFICIALS NOT TO BENEFIT (ASPR 7-103.19)

No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

18. COVENANT AGAINST CONTINGENT FEES (ASPR 7-103.20)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

FP or PR
9 Feb 60

SECRET

19. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (ASPR 8-701)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated.

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

FP or PR
9 Feb 60

-11-

SECRET

(vii) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at anytime after such one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

FP or PR
9 Feb 60

ation and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (e), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) for completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not therefore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) the total of --

(A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e)(1) hereof;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in

paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above; and

(C) a sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e)(i) and (ii)(A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (e) or (e) hereof shall be governed by the principles for consideration of costs set forth in paragraph 8-302 of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except

FP or PR
9 Feb 60

that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a

FP or PR
9 Feb 60

-15-

SECRET

period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the Office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof. (Rev. No. 49, 10/1/59).

20. AUTHORIZATION AND CONSENT (ASPR 9-102.1)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted. (Rev. No. 28, 1/28/58)

21. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT (ASPR 9-104)

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted. (Rev. No. 35, 7/15/58.)

FP or PR
9 Feb 60

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22. BUY AMERICAN ACT (ASPR 6-104.5):

(a) In acquiring end products, the Buy American Act (41 U.S. Code 101-105) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States; and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(c) Any component mined, produced, or manufactured in Canada, but not set forth in the list of Canadian supplies excepted by the Secretary and maintained pursuant to paragraph 6-103.5(a) of the Armed Services Procurement Regulations, shall be treated as a component mined, produced, or manufactured outside the United States, for the purpose of (a)(iii)(B) above, unless such component is to be incorporated in an end product to be delivered under this contract which is on such list, or is an item on the list set forth in paragraph 6-105 of the Armed Services Procurement Regulations, or is otherwise determined to be nonavailable as set forth in (b)(ii) above. (Rev. No. 45, 4/20/59)

FP or PR
9 Feb 60

23. FILING OF PATENT APPLICATIONS (ASPR 9-106)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

24. PATENT RIGHTS (ASPR 7-107.2)

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either

(A) in the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause. (Rev. No. 28, 1/28/58.)

FP or PR
9 Feb 60

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions. (Rev. No. 28, 1/28/58.)

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in the use of any method. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel;

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(1) above; and

(iii) the practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(i)(B) or (d)(iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with

FP or PR
9 Feb 60

a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) interim reports, at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c) (1) above, the Contractor shall do the following:

(1) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a non-exclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated

FP or PR
9 Feb 60

companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d)(ii) above; and

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive rights to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer. The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a non-exclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (e)(i) above shown to be due in accordance with any interim report delivered under

FP or PR
9 Feb 60

-21-

SECRET

(c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c)(iii) above;

(ii) written disclosures for all Subject Inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above or in accordance with such final reports or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below. The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of a patent rights clause containing all the provisions of this Patent Rights clause except provisions (f) and (i) in any subcontract hereunder of three thousand (\$3,000) or more, having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer or unless there has been a waiver of the requirement as hereinafter provided. The Contractor, if unable to comply with the requirement that such a patent rights clause be included in a subcontract after exerting all reasonable effort to do so, may submit to the Contracting Officer a written request for waiver or modification of such requirement. If, within thirty-five (35) days after the receipt of such request, the Contracting Officer does not mail or otherwise furnish the Contractor written denial of such request or notification that the Government requests the Contractor's cooperation with the Government, which the Contractor agrees to provide, in negotiating with the subcontractor for the acceptance of a suitable patent rights clause, the requirement shall be deemed to have been waived by the Contracting Officer as to all patent rights provisions with respect to Subject Inventions, except such provisions, if any, relating to the production or utilization of special nuclear material or atomic energy.

FP or PR
9 Feb 60

Such request shall specifically state that the Contractor has used all reasonable effort to comply with said requirement and shall cite the waiver provision hereinabove set forth. The Contractor is not required when negotiating with a subcontractor, to obtain in behalf of the Government any rights in Subject Inventions other than as provided herein. However, the Contractor is not precluded from separately negotiating with a subcontractor for rights in Subject Inventions for the Contractor's own behalf, but any costs so incurred shall not be considered as an allowable charge or cost under this contract. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses, furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of the Contractor's inability to obtain, in accordance with the requirements of (g) above, the prescribed or other authorized suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay. Upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances and the contract shall be modified accordingly. (Rev. No. 38, 10/15/58).

25. DATA (ASPR 9-203.1)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

FP or PR
9 Feb 60

SECRET

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; provided, that with respect to the Subject Data now or hereafter covered by copyright and not originated in the performance of this contract, such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(c) The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of the Subject Data furnished under this contract, (i) of all invasions of the right of privacy contained therein and (ii) of all portions of such Data copied from work not composed or produced in the performance of this contract and not licensed under this clause.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right, otherwise granted to the Government under any patent.

(f) Subject to the proviso of (b) above and unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract. (Rev. No. 38, 10/15/58.)

26. MILITARY SECURITY REQUIREMENTS (ASPR 7-104.12)

(a) The provisions of this clause shall apply to the extent that this contract involves access to security information classified "Confidential" including "Confidential-Modified Handling Authorized" or higher.

FP or PR
9 Feb 60

SECRET

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254) or other written information.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through its authorized representative, determine that the Contractor has not complied with such requirements, the Government shall inform the Contractor in writing of the proper actions to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified security information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

FP or PR
9 Feb 60

SECRET

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information. (Rev. No. 34, 6/11/58; Rev. No. 48, 8/1/59)

27. UTILIZATION OF SMALL BUSINESS CONCERNS (ASPR 7-104.14)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns. (Rev. No. 28, 1/28/58.)

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

28. EXAMINATION OF RECORDS (ASPR 7-104.15)(Mod.)

(a) The Contractor agrees that the Contracting Officer or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. (Rev. No. 39, 11/3/58; Rev. No. 42, 1/9/59.)

29. GRATUITIES (ASPR 7-104.16)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

30. CONVICT LABOR (ASPR 7-104.17 - ASPR 12-203)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

31. MATERIAL INSPECTION AND RECEIVING REPORT (ASPR 7-105.7)

At the time of each delivery under this contract the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Material Inspection and Receiving Report (DD Form 250 or comparable form). The Government shall furnish the required forms to the Contractor upon request. (Rev. No. 35, 7/15/58).

32. SUBCONTRACTS (AFPI 7-4030)

No contract shall be made by the contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

33. SUBCONTRACTS (AFPI 7-4042)

If this contract provides for price redetermination, the following additional provisions shall apply to subcontracts:

(a) No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

(b) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract.

FP or PR
9 Feb 60

27
SECRET

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis; or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract; or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

(f) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (c) above.

The provisions of the clauses of this contract entitled "Subcontracts" shall be applicable to this contract in addition to the provisions pertaining to subcontracts appearing in the price revision clause. In the event of conflict between the clauses, the clauses entitled "Subcontracts" shall govern. (AFPC No. 23, 8/4/59.)

34. GROUND AND FLIGHT RISK (ASPR 10-404)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open," during "operation," and in "flight," as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means —

(A) aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled, provided that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Govern-

FP or PR
9 Feb 60

SECRET

ment under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landings, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight,

FP or PR
9 Feb 60

-29-
SECRET

whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether it agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs it incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A. M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (f) of this clause, be made in the contract price to compensate the Contractor for any additional costs it incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government-Furnished Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

FP or PR
9 Feb 60

010111

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions, the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officer, and any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) sustained during flight if the pilot conducting such flight has not been approved in writing by the Contracting Officer;

(iii) while in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) to the extent that such damage, loss or destruction is in fact covered by insurance;

(v) consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; provided, however, in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply;

(vi) sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss

FP or PR

9 Feb 60

SECRET

or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause; or

(vii) under this clause, where the total loss resulting from each event separately occurring is less than \$500.

(e) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(f) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(g) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and, further, except in cases covered by (d)(vii) above, the Contractor should furnish to the Contracting Officer a statement of:

- (i) the damaged, lost, or destroyed aircraft;
- (ii) the time and origin of the damage, loss, or destruction;
- (iii) all known interests in commingled property of which aircraft are a part; and
- (iv) the insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (d)(vii) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (g) and this contract shall be modified in writing accordingly.

FP or PR
9 Feb 60

(h) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss, or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof, and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(i) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and upon the request of the Contracting Officer shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

35. INSPECTION AND AUDIT (AFFI 7-4023).

(a) The Contractor agrees that its books and records and its plants, or such part thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

FP or PR
9 Feb 60

SECRET

36. GOVERNMENT-FURNISHED PROPERTY (ASPR 13-502)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for the Control of Government Property in the Possession of Contractors" (Appendix B,

FP or PR
9 Feb 60

Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract. (Rev. No. 33, 5/14/58.)

(d) The Government-furnished property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) (1) Except for loss, destruction or damage resulting from a failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished property as required by paragraph (e) hereof, and except as specifically provided in clause (s) of this contract or in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction or damage to the Government-furnished property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(I) Fire, lightning, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, vandalism and malicious mischief, sabotage, aircraft or objects falling therefrom, vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or

FP or PR

9 Feb 60

35
SECRET

(II) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-furnished property in as good condition as when received for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; (III) a separate and complete major industrial operation in connection with the performance of this contract.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished property caused by any excepted peril.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished property from further damage, separate the damaged and undamaged Government-furnished property, put all the Government-furnished property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished property (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this sub-

SECRET

paragraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished property for which the Contractor is relieved of liability under the foregoing provisions of this contract, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished property in accordance with the provisions of this contract, the Government-furnished property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-Furnished property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-Furnished property for the benefit of the Government.

(vii) (Where applicable). In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks", to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished property is located.

FP or PR
9 Feb 60

-37-

SECRET

(h) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor shall be in writing.

37. ALTERATIONS IN CONTRACT (ASPR 7-105.1)

The following alterations have been made in the provisions of this contract: